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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re E.V., et al., Persons Coming Under
the Juvenile Court Law.

B210739
(Los Angeles County
Super. Ct. No. CK73264)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Petitioner and Respondent,

v.

D.M. and R.V.,

Objectors and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County, Valerie Lynn Skeba, Juvenile Court Referee. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for appellant D.M.

John L. Dodd & Associates and Mitchell Keiter, under appointment by the Court of Appeal, for appellant R.V.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, Frank J. DaVanzo, Principal Deputy County Counsel, for Respondent.

INTRODUCTION

D.M. (mother) and R.V. (father) (collectively, parents) appeal from the jurisdictional findings and disposition orders of the juvenile court pursuant to Welfare and Institutions Code sections 355 and 361¹ with respect to fifteen-year old H.M. and seven-year old E.V. (children). Parents argue that there was insufficient evidence to support both the juvenile court's exercise of jurisdiction over the children and its order removing the children from their custody. We conclude that there is sufficient evidence of the danger posed to the children by evidence of the parents' chronic alcohol abuse and related behavior so as to support both orders. Because we affirm on this basis, we do not address whether evidence of an alleged incident of sexual abuse perpetrated by father against father's daughter from a prior marriage was sufficient to support the juvenile court's orders.

BACKGROUND

A. Detention

Father and mother were legally married, and E.V. was their biological child. H.M. was mother's daughter by another man. Also residing in the household were two of father's children from a prior marriage: a fifteen-year old son, R.C.V., and a fourteen-year old daughter, A.V.²

On June 6, 2008, the Los Angeles County Department of Children and Family Services (DCFS) received a report that A.V. had alleged that she had been sexually abused by father. According to the reporting party, A.V. stated that she had awakened on New Year's Day 2008 to find father lying on the bed next to her. What she thought was his penis was in her hand. Father jumped out of bed and fled into the bathroom. A.V.

¹ All statutory references are to the Welfare and Institutions Code unless stated otherwise.

² R.C.V. and A.V. were the subjects of separate juvenile court proceedings and are not subjects of this appeal.

had reported the incident to her adult sister, but not to mother. A.V. had also given a letter to her teacher expressing suicidal ideation. Although parents had been informed of the letter, they had not had A.V. assessed.

DCFS interviewed the family. H.M. told DCFS that the police had been called once, approximately one year before, because of parents' fighting, but she had not seen any incidents of domestic violence. She said that parents did not do drugs. H.M. said that she was not physically disciplined, and denied that parents had abused any of the children in the household. At first, H.M. stated that parents drank alcohol, but were calm when they did so. She later told DCFS that parents would argue, but it was only verbal. H.M. did not know why A.V. and father were not getting along.

E.V. told DCFS that parents argued only when they "make a party." When parents drank, E.V. would get water for them. That would make father feel better, but sometimes mother was still drunk the next morning. Parents would make a party on Friday or Saturday or during vacations. E.V. sometimes cried and hid under the bed when parents fought. E.V. denied that parents used drugs or hit any of the children, although mother once accidentally ripped a necklace off of him while she was drinking. He felt safe at home, except when parents were drinking. E.V. said that A.V. would hide in the bedroom while parents were fighting.

R.C.V. denied that there was any drug use or physical abuse in the household. He told DCFS that he tried to minimize the time he spent there because he did not like the environment, including "the drinking and fighting."

A.V. told DCFS that, in late 2006, she lived in Colorado with her biological mother. She visited father for Christmas in 2006. On Christmas Eve, she fell asleep in father's bed. When she awoke, her hand was on what she thought was father's penis, though she was not sure. Father's hand was over her hand, and he was manipulating her hand in "a jacking off motion." A.V. immediately got out of the bed and hid in the bathroom. She called her adult sister, V.V., and asked V.V. to pick her up. V.V. did so, but A.V. did not tell V.V. about the incident. A.V. thereafter returned to live with her biological mother in Colorado. There had been no further sexual abuse. A.V. moved in

with father in February 2008, after her biological mother died of cancer. In June 2008, A.V. disclosed to V.V. the incident of abuse. V.V. advised A.V. to tell someone to get help. A few days later, A.V. reported the incident to her school psychologist.

A.V. told DCFS that she did not get along with mother. Once, when mother was drunk, she had pushed A.V. against the wall while trying to hit V.V. Mother and father would get drunk and physically fight. Mother verbally abused A.V. when she got drunk.

Mother denied that there was any domestic violence or sexual abuse in the household. She did not use corporal punishment on any of the children in the household, and she did not discipline A.V. or R.C.V. at all because they did not like her. She had not known of A.V.'s allegation against father. She denied that A.V. had been with them for Christmas 2006. A.V. had been with them for New Year's Eve, but she had slept with H.M. Mother had slept in the same bed as father that night. Mother stated that she did not drink much; she drank only at monthly barbecues.

Father denied that A.V. was with him on Christmas Eve 2006. He said A.V. was with her mother in Colorado. He did not remember seeing A.V. at all in 2006. None of his children slept in the same bed as he did. He stated that he drank alcohol on the weekends, but he was not an alcoholic. He denied any domestic violence in the home and denied that he used physical discipline on the children.

A.V.'s adult sister, V.V., confirmed that A.V. had called V.V. to pick her up from father's house on Christmas 2006. A.V. had not disclosed the incident of abuse then; she had said only that she did not want to be at father's house anymore. A.V. had disclosed the incident of abuse on June 1, 2008. A.V. had said she awakened with her hand in father's pants. She had jumped out of bed and locked herself in the bathroom. V.V. told DCFS that she (V.V.) had not been sexually abused, but that she was estranged from father and that he had physically disciplined her with a belt and other objects when she was a child.

Another of A.V.'s adult sisters, Eve.V., told DCFS that she, too, was estranged from father, and that she, too, had been physically abused by father. She said father had disciplined her with "whatever object he could find."

DCFS spoke to A.V. again. A.V. said that father treated her badly because he “made her clean the house, wash the dishes, and [mother] and [H.M.] did not do anything.” Father and mother yelled at her and were verbally abusive. A.V. confirmed that father had used her hand to manipulate his penis during her visit for the holidays, but A.V. was not confident of the exact date.

The children were detained by the Los Angeles County Sheriff’s Department and released to the care of DCFS. They were placed in foster care. DCFS convened a team decision making meeting (TDM) on June 9, 2008, which was attended by parents and several other relatives. Parents denied that they drank to the point of intoxication, and blamed the situation on A.V. During the TDM, mother described an incident when police were called to the home in June 2007, but mother denied it was violent. She stated that she and father had been drinking earlier in the day. E.V. had locked himself in the bedroom and was dressing up in mother’s clothing. Father broke the door down. H.M. had “assumed” that father was beating mother and called the police. The police had arrested father, but the charge was dismissed for insufficient evidence. Parents agreed during the TDM to enroll in domestic violence counseling, alcohol awareness and substance abuse counseling, and individual counseling and parenting classes.

On June 11, 2008, DCFS filed a petition pursuant to section 300 with respect to children. DCFS alleged in counts a-1, b-3 and j-2 that mother had physically abused children’s sibling, A.V., by pushing her against a wall. In counts b-1 and b-4, DCFS alleged that parents had alcohol abuse problems that rendered them incapable of providing regular care for the children and that created a detrimental home environment. In counts b-2, d-1 and j-1, DCFS alleged that father had sexually abused the children’s sibling, A.V. DCFS alleged in count b-5 that parents had a history of domestic violence and engaging in violent altercations in the children’s presence.

Prior to the detention hearing, DCFS reported that, in June 2000, an allegation of general neglect against mother with respect to H.M. had been substantiated. Mother and H.M. had received voluntary family maintenance services. In October 2001, an allegation of emotional abuse due to domestic violence and alcohol abuse had been made

against parents. The allegation was determined to be inconclusive. In September 2003, allegations of physical abuse and general neglect had been made with respect to R.C.V., H.M. and E.V. The allegations had been determined to be unfounded.

DCFS also reported that father's criminal history included, among other things, a 1998 misdemeanor conviction for spousal battery. In June 2007, a charge of inflicting corporal injury to a spouse had been dismissed. Mother's criminal history revealed a charge of driving under the influence in 1999. She completed a three-month first offender alcohol and drug education program.

At the detention hearing, parents denied the allegations in the petition. The juvenile court ordered the minors detained, and ordered DCFS to provide family reunification services and monitored visits to parents. Father's attorney requested and the juvenile court ordered that DCFS not interview father regarding the allegations against him. After a prerelease investigation report and a hearing, the juvenile court placed children with mother's adult daughter, D.G.

B. Jurisdiction/Disposition

1. The July 2008 Jurisdiction/Disposition Report

In July 2008, DCFS reported that A.V. had "clarified" her statement. She stated that the abuse had occurred on New Year's Eve 2005. She had given the wrong dates in the past because she was confused. A.V. stated that parents, mother's adult daughter D.G. (the children's caretaker), and D.G.'s boyfriend were drinking shots of tequila. A.V. and E.V. fell asleep in father's bed. When she awoke she felt "something 'soft'" in her hand. She believed it was father's penis, although she did not see the object, and she did not look to see who was lying next to her in the bed. She claimed she did not feel anyone manipulating her hands. A.V. hid in the bathroom for thirty minutes. After she came out, she saw father exit the bedroom, buttoning his pants. That was the only time she had been sexually abused, and she had no knowledge that any of her siblings had been abused.

A.V. told DCFS that parents drank Bud Light most weekends. They would become intoxicated and play loud music sometimes until 4:00 a.m., making it difficult to sleep. Once, the children missed school because parents had gotten drunk the night before and were hung over.

A.V. reported an incident in May or June 2008 when parents became drunk at a party at her Uncle J.R.'s house. Mother began to verbally abuse A.V.'s adult sister, V.V. When A.V. came to her sister's defense, mother pushed her (A.V.). That same evening, A.V. tried to prevent father from driving drunk; father grabbed her wrist, causing pain, slight bruising and swelling.

R.C.V. told DCFS that parents drank beer on weekends, but not every weekend. Occasionally, they continued to drink with the music on until the morning hours. He had occasionally seen parents intoxicated to the point where they would slur their speech or lose their balance. Father sometimes drank beer with friends after work and would send R.C.V. to the store with other people to buy beer. R.C.V. sometimes left the house when parents were drinking.

E.V. told DCFS that his parents did not drink alcohol and never argued, and that he had never been abused.

H.M. told DCFS that A.V. had disclosed a few months prior that father had used her (A.V.'s) hand to masturbate him. H.M. did not believe A.V. H.M. stated that her parents occasionally drank beer, but they did not drink in excess or become intoxicated, nor did they stay up late playing loud music. H.M. told DCFS that, in 2007, she had called the police by mistake when she thought she saw father hit mother, but her "eyes played a trick on her." She said she sometimes "sees things that aren't there." That night, E.V. had locked himself in parents' bedroom and fallen asleep. Parents had been drinking but were not intoxicated. She saw her parents knocking on the bedroom door and screaming at E.V. to open the door when she thought she saw father strike mother. She quickly realized she was mistaken. She said that father "never struck" mother "in any way."

V.V. told DCFS that A.V. had called her on New Year's Day—she believed 2005 going into 2006—to pick A.V. up from father's house. At the time, A.V. said only that she no longer wanted to stay with father. Recently, A.V. had disclosed the incident of abuse. V.V. stated that she had never been abused by parents, but parents did abuse alcohol. In May or June 2008, parents attended a party at Uncle J.R.'s house. Parents both became intoxicated on beer and tequila to the point where they were slurring their speech. Mother became argumentative; father was unbalanced and dropped a shot glass. Mother began verbally abusing her (V.V.), and at one point began to push and grab her. When A.V. confronted mother about her behavior, father grabbed A.V. by the wrist very hard and refused to let go until other family members pulled A.V. away. A.V.'s wrist was very red. They applied ice to keep the swelling down. V.V. stated that, when she lived with parents, they drank beer heavily and she observed both drunk on numerous occasions.

Mother denied that A.V. had ever slept in the same bedroom as father and that, in the year 2006, A.V. was not with the family. She was unaware of any sexual abuse and A.V. had never reported any to her. Mother stated that she and father would occasionally drink two or three beers, but they never became intoxicated, abused alcohol, stayed up late playing music, or neglected the children. Mother stated that the family had no problems to solve and that DCFS's intervention was unwarranted.

Mother recalled the incident at Uncle J.R.'s party. She stated that she and father had only two or three beers and were not drunk. V.V. was drunk, however. V.V. began to insult mother and pushed her to the sofa, but mother did not respond. Mother stated that she and father never fought and never hit or harmed each other.

Mother stated that, in 2007, the police had been called for an incident of domestic violence that did not occur. H.M. had become startled and called police when parents were yelling at E.V. to open the door. In accordance with his counsel's request and the juvenile court's order, father was not interviewed.

DCFS provided the police report concerning the July 2007 incident of domestic violence. The police report indicated that police responded at approximately 4:45 a.m.

Mother told police that she and father had been drinking “since midnight.” Parents had gotten into an argument because E.V. had locked himself inside their bedroom. Father had pushed mother and hit her in the face; she had punched father. H.M. told police that father had pushed mother into a mirror, and mother had pushed father into a television cabinet. Mother had puffiness around her left eye from being struck; father had several bleeding scratches on his back. There were broken beer bottles on the floor, and mother’s feet were bleeding from walking on broken glass. Police arrested father.

DCFS interviewed the children’s adult cousin, S.M. S.M. told DCFS that father had made her touch his penis years earlier, when she was four years old. Father and his first wife frequently babysat S.M. and her sister when they were children. She recalled on those occasions she would fall asleep in a bed with her sister and cousins (Eve.V. and V.V.), but would awake in a bed with father. On three or four occasions, she was awakened by father grabbing her hand and placing her hand on his penis. Once she felt his testicles. She did not recall that father ever had an erection; his penis was always soft. S.M. had never disclosed the abuse to anyone until A.V.’s report prompted her to do so. S.M. had never discussed the sexual abuse with A.V.

The children’s Uncle J.R. also was interviewed by DCFS. He told DCFS that he was reluctant to speak about parents and would not go into details. He told DCFS that he had parents over for carne asada to celebrate his birthday in June 2008. Parents were both drunk. V.V. was not drunk; she was not drinking at the time because she was pregnant. Mother verbally provoked V.V. until V.V. became angry and began to answer mother back. A large argument ensued, and Uncle J.R. asked parents to leave. He did not see father hurt A.V., but A.V. had stayed the night because she did not feel safe going home with father.

DCFS interviewed A.V.’s maternal grandmother (the mother of father’s deceased first wife). Maternal grandmother stated she had little contact with father since he and his first wife had separated. She stated that A.V. was with her in El Paso, Texas for New Year’s Day 2007. A.V. was with her in Colorado for New Year’s 2008. A.V. had never

disclosed any abuse to maternal grandmother, but A.V. had complained that parents drank too much.

2. A.V. Recants to Police

On July 18, 2008, A.V. recanted her accusations against father in a statement to police. A.V. signed a written statement as follows: “What I said about my dad touching me in New Years [*sic*] was not true. I only said it because I was mad at him and because he left my mom and also because he gets drunk all the time and I don[’]t like that at all. I said the truth because I don[’]t want [E.V.] & [H.M.] not see there [*sic*] dad for something he did not do. He also shouldn[’]t be punished for something like that and he didn[’]t do it.”

3. The August 2008 Supplemental Report

In August 2008, DCFS filed a supplemental report to address whether to return children to mother if father agreed to move out of the family home. DCFS recommended against doing so because, although A.V. had recanted her allegations of sexual abuse, the evidence indicated that mother had a problem with alcohol that she had yet to admit or address. DCFS stated, “What is alarming to the Department, is that the parents have demonstrated no insight, & no self-examination into their alcohol problems, and they have failed to accept their roles in their alcohol dependency.”

4. The Jurisdiction/Disposition Hearing

The juvenile court held a hearing to adjudicate the petition on September 3 and 4, 2008. DCFS’s reports were received into evidence without objection.

A.V. testified that she had lived with parents since around January of 2008. She had seen parents drink Bud Light. When parents drank, A.V. would go in the bedroom with E.V. and H.M. because she didn’t want to hear them doing “dumb stuff.”

At the party at Uncle J.R.’s house, mother and V.V. got into a fight. Mother pushed A.V. against a wall when trying to get at V.V. Mother “talked like she had drank

too much.” Mother was “talking a lot of smack” to V.V. because V.V. was pregnant. At one point, father tried to take A.V. in the car with him, but she did not want to go because he had been drinking and was afraid he might crash. Father grabbed her wrist to pull her. Her hand turned red and was swollen, but the swelling went down after she put ice on it. Otherwise, A.V. had never seen or heard parents get into fights. A.V. testified that parents usually got drunk on weekends. A.V. would turn the TV on loud because she did not want to hear parents fight or argue.

A.V. testified that around Christmas one year—she was unsure of what year it was—she slept next to father in the bed. When she woke up, she “felt like I had his penis in my hand.” His hand was on hers, “taking control of it,” moving her hand up and down. She then went to the restroom and stood there for 20 to 30 minutes. When father came out of the bedroom, he was “zippering his pants and his belt.” A.V. called V.V. to pick her up.

A.V. testified that, just before her mother had died, she agreed to live with father because her sister, Eve.V., told her that father had already sent money that Eve.V. had used to purchase a ticket for A.V. to travel to father’s house. A.V. had never discussed the incident of abuse with her cousin, S.M.

On cross-examination, A.V. testified that she did not see who was in the bed next to her, but did not believe it could have been anyone other than father because everyone else in the house was sleeping in the living room when A.V. left the bedroom. Mother and father did not drink every weekend, but they would still drink even if there was no party. A.V. had missed school one day because parents were drunk and could not get up to take her. Other than at Uncle J.R.’s party, mother had never pushed or hit A.V. A.V. testified that she had recanted to police because her grandmother was sick and “can’t be driving all the way over here” [presumably, to the courthouse]. A.V. also testified that she had lied in a letter in which she recanted her statements about her father’s sexual abuse. She did so because she was asked if she was lying. She insisted she was not lying in her testimony.

S.M. testified that her aunt—A.V.’s mother—used to babysit her (S.M.) and her sister every weekend when they were little. Father was there as well. On three or four occasions while S.M. was in preschool, S.M. woke up with her hand touching father’s “private part.” His hand was on top of hers. She never told anyone in the family until she heard about A.V.’s allegation. She had never discussed the case with A.V. SM was 23 years old at the time of the hearing.

D.G. (children’s caretaker) testified that, in January 2008, she visited parent’s house most days after work for two or three hours. She sometimes stayed to dinner, and if she took her laundry over she would stay until 8:00 or 9:00 p.m. Mother sometimes—approximately twice per month—drank five to six beers while D.G. was at the house. D.G. denied seeing mother drunk. She had never seen mother hit the children.

Mother testified that, in the past two years, she had not hit the children, and she had never hit R.V.C. or A.V. or physically disciplined any of the children.

5. The Juvenile Court’s Ruling

The juvenile court instructed counsel for all parties to submit written closing arguments. In her closing argument, counsel for the children argued that the juvenile court should sustain only the allegations in the petition relating to parents’ alcohol abuse. Counsel for mother stated that mother was “adamant that she does not abuse alcohol.”

The juvenile court stated that it found the testimony of A.V. and S.M. “to be very, very credible,” and the testimony of mother “not . . . very credible at all.” The juvenile court found that D.G.’s testimony supported DCFS’s position, stating, “[M]other drank five to six beers during the time that that witness was there, and then she [D.G.] left. And I think that the drinking continued. I think, really, the root of this family’s problem is alcohol abuse.”

The juvenile court ordered the petition amended. Counts b-2 and j-2 were amended to read, “Mother and mother’s companion [father] have an alcohol abuse problem, which results in them engaging in inappropriate activities, such as verbal and physical altercations with each other and with [A.V.]. This places all of the children at

risk for physical and emotional harm.” Counts d-1 and j-2 were amended to read, “On a prior occasion in 2006 or 2007, the child [E.V.]’s father . . . sexually abused the child [E.V.]’s sibling [A.V.]. The sexual abuse consisted of the . . . father placing the sibling’s hand on the . . . father’s penis. Such sexual abuse of the sibling on the part of the . . . father endangers the child’s physical and emotional health and safety and necessitates court jurisdiction.” The juvenile court sustained these counts as amended, and dismissed the remaining counts.

The juvenile court removed the children from parents’ custody and placed them in the care of DCFS for suitable placement. DCFS was ordered to provide family reunification services and monitored visitation to parents. Parents were to participate in random alcohol testing, alcohol abuse counseling and parenting classes. Father was ordered to participate in individual counseling to address sex abuse issues; mother was ordered to participate in individual counseling to address sex abuse awareness and substance abuse. Parents timely appealed.

DISCUSSION

A. Jurisdictional Findings

Parents argue that there was insufficient evidence to support the juvenile court’s jurisdictional findings.³ We disagree.

1. Standard of Review

The standard of proof at the jurisdictional stage is a preponderance of the evidence. (§ 355, subd. (a); Cal. Rules of Ct., rule 5.684(f);⁴ *In re Mariah T.* (2008) 159

³ Father challenges the juvenile court’s jurisdictional findings only with respect to E.V. Mother’s challenge relates to both children.

⁴ All rule references are to the California Rules of Court.

Cal.App.4th 428, 438.) We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re David M.* (2005) 134 Cal.App.4th 822, 829; *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Under this standard, we review the record to determine whether there is any reasonable, credible, and solid evidence to support the juvenile court’s conclusions. We resolve all conflicts in the evidence and make all reasonable inferences in support of the juvenile court’s orders. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1427.) An order is not supported by substantial evidence if it is based solely upon unreasonable inferences, speculation or conjecture. (*In re H.B.* (2008) 161 Cal.App.4th 115, 120.) “‘The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.’ [Citation.]” (*In re Savannah M., supra*, 131 Cal.App.4th at p. 1394.)

2. Sufficient Evidence Under Section 300, subdivision b

The juvenile court exercised jurisdiction, inter alia, based on the allegation of parents’ alcohol abuse under section 300, subdivision (b). That provision states in relevant part: “Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶] (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s . . . substance abuse. . . .”

“The three elements for a section 300, subdivision (b) finding are: ‘(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the [child], or a “substantial risk” of such harm or illness.’ [Citation.] The third element . . . requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).” (*In re Savannah M., supra*, 131 Cal.App.4th at pp. 1395-1396; accord, *In re Rocco M.* (1991) 1

Cal.App.4th 814, 820.) Parents argue that there was no evidence that children had suffered “serious physical harm” from parents’ alcohol abuse in the past, or that children were likely to suffer such harm in the future.

We conclude that, under the applicable standard of review, there was sufficient evidence to support the juvenile court’s conclusion that children faced a substantial risk of serious physical harm as a result of parents’ alcohol abuse. Evidence that parents consumed alcohol, without more, would not sustain the juvenile court’s exercise of jurisdiction. (See *In re Savanna M.*, *supra*, 131 Cal.App.4th at p. 1397.) But, when viewed most favorably to the juvenile court’s order, the record establishes that parents did not merely *use* alcohol, they *abused* it, frequently drinking to excess and often becoming combative and occasionally violent when they did so. Furthermore, the aggregation of alcohol-related incidents over a period of years supports the conclusion that parents’ alcohol abuse is chronic and presents a substantial danger to the physical safety of the children. The juvenile court also could reasonably conclude that the risk to children was compounded by parents’ refusal to admit that they had a problem with alcohol.

There was sufficient evidence that parents drank frequently and to excess, and that they were sometimes angry and combative when drinking. E.V. told DCFS that his parents drank on the weekends and during vacations, and that mother was sometimes still drunk the next morning. Mother had, albeit accidentally, ripped a necklace from E.V.’s neck when drunk. E.V. told DCFS that parents argued when they drank, to the point where E.V. would cry and hide under the bed. He did not feel safe when parents were drinking. R.C.V. spent as little time in the household as he could because of “the drinking and fighting.” A.V. told DCFS that parents would get into physical altercations when they got drunk, and that mother would become verbally abusive toward A.V. A.V. told DCFS and testified during the hearing that she had missed school one day because parents had gotten drunk and were too hung over to take her to school. A.V. and R.C.V. both told DCFS that parents drank most weekends, sometimes playing music until the early morning hours. V.V. told DCFS that parents abused alcohol. D.G. testified that,

although mother never appeared drunk, mother drank as many as five or six beers over a two to three hour period in the early evening.

There was also substantial evidence that parents' judgment was compromised while drinking, and that their behavior sometimes posed a danger to the children. Mother had a DUI conviction in 1999. In 2007, H.M. called the police because she believed father had hit mother. When police responded at approximately 4:45 a.m., mother told police she and father had been drinking since midnight. Broken beer bottles littered the floor. Mother's feet were bleeding and her eye was puffy, as if she had been struck. Father had bloody scratches on his back. Mother told DCFS that father had broken down the bedroom door because E.V. had locked himself inside and "was frighten[ed]" and refused to open the door. In June 2008—only days before children were detained—parents both had gotten drunk on beer and tequila to the point where they were slurring their speech and father became unbalanced. Mother verbally abused V.V. and, when V.V. answered back, physically attacked her, knocking A.V. against a wall in the process. Father, despite being visibly drunk, grabbed A.V. by the wrist and tried to drag her into a car to drive. He hurt A.V. so badly her wrist became red and swollen and had to be iced, and A.V. was afraid to return home.

Furthermore—and notwithstanding their enrollment in substance abuse counseling—there was substantial evidence that parents did not tell the truth about their drinking to DCFS, and parents were intransigent in refusing to admit that they had a problem with alcohol. When children were detained, father denied that he was an alcoholic, and said he drank only on weekends. R.C.V., however, told DCFS that father drank with friends after work, and sometimes sent R.C.V. to fetch beer for him from the store. Mother told DCFS that she did not drink much, and only drank at monthly barbecues. Mother later told DCFS that she and father would occasionally drink two or three beers, but they never became intoxicated. In her written closing argument after the hearing, mother's counsel stated that mother was "adamant that she does not abuse alcohol."

Based on this evidence, there was substantial evidence upon which the juvenile court reasonably could conclude that children faced a substantial risk of serious physical harm. The juvenile court was not prohibited from asserting jurisdiction merely because parents had not *yet* lashed out at one of the children (in addition to the incident with A.V.) or been involved in a serious car accident while drinking. “Juvenile dependency law in general does not require a child to be actually harmed before [DCFS] and the courts may intervene.” (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 383, fn. 3.) “‘The purpose of dependency proceedings is to prevent risk, not ignore it.’ [Citation.]” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104, quoting *In re Eric B.* (1987) 189 Cal.App.3d 996, 1004.)

Father relies on *In re Janet T.* (2001) 93 Cal.App.4th 377 (*Janet T.*) In that case, the court held that a petition pursuant to section 300 that alleged only that a mother had “failed to ensure” that her children attended school and who had exhibited unspecified “mental and emotional problems” failed to allege a substantial risk of serious physical injury or illness. (*Id.* at pp. 388-389.) Unlike the petition in *Janet T.*, the evidence in this case of parents’ chronic alcohol abuse, argumentative and occasionally explosive temperaments, and the injury to children’s sibling was sufficient to demonstrate that children faced a substantial risk of serious physical injury.

Father also cites *In re W.O.* (1979) 88 Cal.App.3d 906. That case concerned whether the mere presence of illicit drugs in a household, when there was but a “remote possibility” that the children might have been endangered thereby, was not sufficient to justify removal of the children when they were otherwise “‘happy, content, clean, [and] overall very well cared for’” (*In re W.O., supra*, 88 Cal.App.3d at pp. 907, 910-911.) That case thus addressed an issue fundamentally different from the issue here.

Father’s reliance on *In re Basilio T.* (1992) 4 Cal.App.4th 155 (*Basilio T.*) also is unavailing. The portion of that case relied upon by father concerned not the juvenile court’s jurisdictional findings, but its disposition order removing the children from their home. (*Id.* at pp. 170-171.) Contrary to father’s argument, the court found that “a history of confrontations” in the household, though “not described in great detail,” were

sufficient to “show a pattern of violent behavior that ha[d] not been corrected.” (*Id.* at p. 169.) Such evidence was sufficient to establish a “substantial risk of serious physical harm” to support the juvenile court’s exercise of jurisdiction. (*Id.* at pp. 168-169.) Though not directly on point, the jurisdictional holding in *Basilio T.* supports the juvenile court’s exercise of jurisdiction in this case.

Mother’s reliance on *In re Rocco M.*, *supra*, 1 Cal.App.4th 814, is similarly misplaced. The court held in that case that a mother created a substantial risk of serious physical harm by permitting a minor access to and the opportunity to use illegal drugs. (*Id.* at p. 826.) Mother relies upon language in which the court questioned whether *other* evidence would have been sufficient to sustain juvenile court jurisdiction. (*Id.* at p. 825.) But the court’s statements about such other evidence were mere dicta, and in any event the relevant facts⁵ do not resemble the facts of this case.

Mother also relies on *In re David M.*, *supra*, 134 Cal.App.4th 822. That case, too, is inapposite. There, the appellate court reversed a jurisdictional order because evidence of the parents’ mental health issues and the mother’s substance abuse problems was not tied to any actual harm or substantial risk of harm to their child. (*Id.* at pp. 825, 829.) The court noted that the record contained no evidence that the parents’ mental health issues impacted their ability to provide a decent home, as the child was healthy, well cared for, and loved, and his parents were raising him in a clean, tidy home. (*Id.* at p. 830.) Here, however, the children were placed at substantial risk of serious physical harm by parents’ chronic alcohol abuse and their alcohol-related behavior.

⁵ The other evidence related to the mother’s “general failure to supervise” her 11-year old child, an incident in which a babysitter once kicked the child and locked him out of the house, and mother’s neglect of the child years earlier in his infancy. (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 825.)

3. Other Jurisdictional Findings

Parents also argue that there was no substantial evidence to support the juvenile court's jurisdictional findings under section 300, subdivisions (d) and (j). We need not consider those arguments, however, because a single jurisdictional finding is sufficient to sustain the juvenile court's exercise of jurisdiction over the children. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-76.) If one jurisdictional finding is supported by substantial evidence, the sufficiency of the evidence supporting any other jurisdictional finding becomes moot. (*In re Jonathan B.*, *supra*, 5 Cal.App.4th at p. 875.) Accordingly, we affirm the juvenile court's exercise of jurisdiction over child.

Father requests that, even if the juvenile court properly exercised jurisdiction on other grounds, we reverse the finding that he sexually abused A.V. We decline to do so. As noted, it is unnecessary for us to address that issue to resolve parents' contentions on appeal.

We also disagree with father's assertion that, because of the juvenile court's finding on the sexual abuse issue, his relationship with the children "will be forever changed." "The strong preference of the law in dependency matters, expressed both judicially and legislatively, is reuniting children with their natural families whenever possible." (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438.) "The purpose of the California dependency system is to protect children from harm and preserve families when safe for the child. (§ 300.2.)" (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) The juvenile court ordered that father receive reunification services. During the reunification period, the juvenile court is required to hold periodic review hearings at which it must determine, among other things, whether DCFS has made reasonable efforts to assist father in his reunification efforts and the extent of father's progress toward alleviating or mitigating the causes that led to the children's detention. (§§ 366, subd. (a)(1)(B), (E); 366.21, subds. (e) [six month review], (f) [12 month review]; 366.22, subd. (a) [18 month permanency review].) Whether father succeeds in reunifying with the children is largely a matter within father's control.

B. Disposition Order

Parents argue that there was insufficient evidence to support the juvenile court's order removing the children from parents' custody. Again, under the applicable standard of review, we disagree.

1. Applicable Principles and Standard of Review

As relevant here, section 361, subdivision (c) prohibits the juvenile court from removing a child from his or her parents' custody "unless the juvenile court finds clear and convincing evidence . . . : [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c); see also rule 5.695(d).) "A parent's right to care, custody and management of a child is a fundamental liberty interest protected by the federal Constitution that will not be disturbed except in extreme cases where a parent acts in a manner incompatible with parenthood. [Citations.]' [Citation.] '[F]reedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment. [Citations.]' [Citation.] Thus, the constitutional right of parents to make decisions regarding their children's upbringing precludes the state from intervening, in the absence of clear and convincing evidence of a need to protect the child from severe neglect or physical abuse. [Citations.]" (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 696.)

Although the standard of proof in the juvenile court is clear and convincing evidence, our standard of review remains the same: we review the juvenile court's disposition order for substantial evidence. (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 193; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) "[W]e review the record in the light most favorable to the dependency court's order to determine whether it contains sufficient evidence from which a reasonable trier of fact could make the necessary

findings by clear and convincing evidence.” (*In re Mariah T.*, *supra*, 159 Cal.App.4th at p. 441.)

2. Sufficient Evidence Supported the Removal Order

Taking as true the evidence recited above with respect to parents’ alcohol abuse and related behaviors, the evidence was sufficient to support the juvenile court’s conclusion that children faced a substantial danger to their physical and emotional well-being if they remained in the home. As discussed, only days prior the children’s detention, mother had become drunk and physically assaulted the children’s adult sibling, V.V., and had pushed A.V. into a wall in doing so. That same night, father had injured A.V. while attempting to drag her into a car he intended to drive, even though he was drunk to the point of slurring his words and losing his balance. A year earlier, during an all-night drinking session with mother, father had kicked down the bedroom door because a frightened E.V. refused to unlock it, prompting H.M. to call the police. Mother, while drunk, had once ripped a necklace from E.V.’s neck, albeit accidentally. There was also evidence that father had been drinking shots of tequila the night before he sexually abused A.V. Father made no statement and gave no testimony to dispute this evidence, and the juvenile court found mother’s flat denials “not . . . very credible at all.”

There was also sufficient evidence to support the juvenile court’s finding that there were no reasonable means to protect the children short of removing them from parents’ custody. With respect to their alcohol abuse, there is sufficient evidence that both parents were offenders. As a result, contrary to mother’s argument, removing father from the home would not have obviated the danger to the children.

Parents again rely on *Basilio T.*, *supra*, 4 Cal.App.4th 155. But *Basilio T.* is distinguishable. In that case, the appellate court noted that the evidence supporting the juvenile court’s removal order boiled down to two incidents of domestic violence that “presumably occurred in or near the minors’ presence,” neither of which “directly affected either minor physically, i.e., the adults were fighting with each other and not directing their anger at the minors or abusing them.” (*Id.* at p. 171.) The appellate court

reversed the removal order. In this case, however, there was evidence that parents drank frequently and their arguments were so heated that E.V. would hide under the bed and cry. Moreover, although there was no evidence that E.V. and H.M. had been physically injured by parents, their sibling A.V. *had* been knocked against a wall by mother and injured by father at Uncle J.R.'s party, only days before children were detained. There also was evidence that the incident of domestic violence in 2007 had been sparked by father directing his anger toward E.V., who was frightened and refused to unlock the bedroom door. Thus, unlike the isolated incidents of domestic violence between the parents in *Basilio T.*, the evidence in this case showed a pattern of fighting between the parents that involved a risk of substantial physical danger to the children.

Mother also relies on *In re Jasmine G.* (2000) 82 Cal.App.4th 282. In that case, the child was a 15-year old girl. The child's parents lived apart; both were employed "law-abiding citizens"; neither had a substance abuse problem; neither had prior encounters with child protective services. (*Id.* at 285.) When the child brought a strange boy into the mother's home in violation of house rules, the mother disciplined the child with a switch, and the father later struck the child on the buttocks and upper legs with a thin belt. Days later, mother again used a switch to discipline the child for failing to wash the dishes. (*Ibid.*) These incidents left marks on the child, and the child was detained. (*Ibid.*) The parents stipulated to juvenile court jurisdiction, voluntarily began to see a therapist and completed a parenting course. At the disposition hearing, the parents foreswore corporal punishment and expressed their remorse; their therapist testified that the child would be in no danger if returned to the home; and the child testified that her parents had learned from the experience and that she wanted to return home. (*Id.* at pp. 285-286.) The juvenile court nevertheless removed the child from her parents' custody. (*Id.* at p. 288.) The appellate court reversed, holding that the social worker's subjective disagreement with parents about parenting philosophies did not constitute clear and convincing evidence of a substantial danger to the child's safety. (*Id.* at pp. 288-291.)

To describe *In re Jasmine G.*, *supra*, 82 Cal.App.4th 282, is to distinguish it. This is not a case involving parents giving their teenage daughter a religious upbringing or failing to “‘understand’ their teenage children” (*Id.* at p. 289.) Nor is this a case in which the removal order was based on a social worker’s subjective opinions regarding the appropriateness of corporal punishment. (*Id.* at p. 290.) The removal order here was based on evidence of parents’ chronic alcohol abuse and the substantial danger that abuse posed to the children’s physical and emotional well being. There is no indication in the record that parents have demonstrated any remorse or accepted any responsibility for their conduct described by the evidence. As noted above, even in her closing argument at the hearing, mother “adamantly” denied that she had a problem with alcohol. As to mother, she attended a few counseling sessions and had been tested negative for drugs and alcohol on five occasions over a two month period. But these activities do not diminish the substantial evidence supporting the trial court orders. For these reasons, we conclude that there is sufficient evidence to support the juvenile court’s orders as to both mother and father.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.